IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Crl.MC.No. 3602 of 2007

(IN THE MATTER IN CRIME NO. 245/2002 OF KUTTOOR POLICE STATION, WHICH IS NOW PENDING AS LPR NO. 26/07 IN SC NO. 878/05 ON THE FILE OF THE ASSISTANT SESSIONS COURT, IRINJALAKUDA)

PETITIONER: 4TH ACCUSED:

SURENDRAN, S/O. BALAKRISHNAN,
KATTIKULAM HOUSE, PONCHANNAM DESOM,KATTOOR VILLAGE
THRISSUR DISTRICT.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS: COMPLAINANT:

1. SUB INSPECTOR OF POLICE,
KATTOOR POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. VIJAYAN, S/O. EKKORUKUTTY,
KALAPPURAKKAL HOUSE, PONCHANNAM DESOM,
KATTOOR VILLAGE.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3602 OF 2007

Dated this the 1st day of December, 2007

ORDER

The petitioner is the 4th accused and he faces indictment in a prosecution for offences punishable, inter alia, under Sec.308 of the IPC. The case is pending before the Sessions Court. Consequent to a non-appearance of the petitioner the case against the petitioner has been transferred to the list of Long Pending Cases. Coercive processes issued by the learned Judge are pending against the petitioner. The petitioner apprehends imminent arrest.

2. According to the learned counsel for the petitioner, the petitioner is innocent. His absence earlier was not wilful. In the trial against the co-accused they have have been found not guilty and acquitted. The victim/the de facto complainant does not want to prosecute the case now. He is willing to

make necessary representation before the court below. An affidavit filed by the de facto complainant/C.W.1 is produced as Annexure-III. It is prayed that the report of the composition may be accepted in the light of the acquittal of the co-accused and further proceedings against the petitioner may be quashed and discontinued.

3. It is for the petitioner to appear before the court below and raise his contentions. The petitioner can certainly raise the contention that the compoundable offences have already been compounded and that charges are not liable to be framed against him for the other offence in the light of the acquittal of the co-accused. Those are pleas which the petitioner must raise before the learned Assistant Sessions Judge at the stage of charge/discharge under Sec.227/228 of the Cr.P.C. I find no reason, at the moment, to invoke the powers under Sec.482 of the Cr.P.C. to quash the proceedings against the petitioner.

4. The petitioners airs an apprehension that his application for regular bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. He therefore prays that appropriate directions may be issued.

5. It is for the petitioner to appear before the learned Judge and explain to the learned Judge the circumstances under

which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Judge would not consider the petitioner's application for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Judge and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge